IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO. 52 OF 2006
IN
NOTICE OF MOTION NO. 1704 OF 2003
IN
SUIT NO. 3349 OF 1989

Sunil Chetan Thadani.] .. Appellant

Versus

1. Haresh Chetan Thadani & Anr.] .. Respondents (Ori.Def.1 & 2)

And

3. Indian Overseas Bank.] .. Respondent (Ori.Applicant)

Mr. Arif Y. Bookwala i/b Ranjit & Co. for the appellant.

Mr. Pankaj Kavli i/b M/s. Ganesh & Co. for respondent No.1.

Ms. K.C. Nichani for the respondent No.2.

Mr. Simil Purohit with Mrs. Neena Kapadia i/b M/s. Pandya Gandhi & Co. for respondent No.3.

CORAM: R.M. LODHA &
ANOOP V. MOHTA, JJ.

DATED: 03RD FEBRUARY, 2006

P.C. :

. Heard Mr. A.Y. Bookwala, the learned counsel for the appellant, Mr. Pankaj Kavli, the learned counsel for respondent No.1 and Mr. Simil Purohit, the

learned counsel for respondent No.3.

2. As regards the operative order passed by the learned Motion Judge in terms of prayer (a) of the Notice of Motion and the clarification that the order dated 5th March, 2003, passed by the Debt Recovery Tribunal is effective and the appointment of the Court Receiver in Suit No.3349 of 1989 by order dated 17th October, 2001 shall not come in the way of the Debt Recovery Tribunal in appointing any private Receiver but also conferring private Receiver such powers as it may deem fit including power to take actual physical possession and sell the mortgage property, does not call for any interference.

3. However, we are of the view that for the purposes of consideration of the Notice of Motion, it was not necessary to go into the question that the consent order for appointment of Receiver was obtained fraudulently. If that was so, then the learned Motion Judge ought to have recalled the order dated 17th October 2001, but he did not do that. Mr. Simil Purohit, the learned counsel for the respondent No.3-Bank submits that the Bank does not have any objection if the Court sets aside the finding of the learned Motion Judge that the consent minutes were

obtained fraudulently.

4. We accordingly set aside the finding of the learned Motion Judge that the consent minutes dated 17th October, 2001, were obtained fraudulently. However, this does not affect the operative order passed by the learned Motion Judge as indicated above. All contentions of the parties regarding appointment of private Receiver by the Debt Recovery Tribunal are kept open to be agitated before the said Tribunal.

5. Appeal is disposed of accordingly.

Sd/-
[R.M. LODHA, J.]

Sd/-
[ANOOP V. MOHTA, J.]

[srpasha@hc]